

SENATE BILL REPORT

SB 6467

As Reported by Senate Committee On:
Agriculture, Water & Rural Economic Development, February 4, 2014

Title: An act relating to ensuring that existing exempt water uses in the Skagit river basin are not subject to interruption.

Brief Description: Ensuring that existing exempt water uses in the Skagit river basin are not subject to interruption.

Sponsors: Senators Honeyford, Bailey, Becker, Angel and Pearson.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/04/14 [DPS, DNP].

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6467 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Honeyford, Ranking Member; Brown and Schoesler.

Minority Report: Do not pass.

Signed by Senator Eide.

Staff: Diane Smith (786-7410)

Background: On October 3, 2013, the Swinomish case was decided by the Washington State Supreme Court in *Swinomish Indian Tribal Community v. Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013). In this case, the Washington State Supreme Court invalidated the uninterrupted water rights of 475 homes and eight businesses in the Skagit River basin. These homes and businesses were developed between April 14, 2001, and October 3, 2013, using groundwater wells. On April 14, 2001, the Department of Ecology (DOE) established an in-stream flow rule for the Skagit River basin.

The 2001 in-stream flow rule did not include allocations or reserves for other future uses. In 2006 DOE amended the 2001 rule, using as its authority a statutory provision allowing for overriding considerations of the public interest (OCPI). This amendment established 27 non-

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interruptible reservations for uses including rural permit-exempt wells. The 475 homes and eight businesses relied on these reservations for their water supplies.

DOE found in applying an economic balancing test as part of the 2006 amendment that the total of these reservations would not significantly harm fish runs. The Supreme Court held that DOE's amendment of the in-stream flow rule to allow these reservations was invalid because the OCPI was a narrow exception into which the amended rule did not fit.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): Permit-exempt wells established between April 14, 2001, and October 3, 2013, in the Skagit River basin are not subject to interruption from in-stream flow rules previously established for the basin.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: These home and business owners relied in good faith on the permits they legally acquired in order to provide uninterrupted water to the homes and businesses they built and inhabit. The impact of the court decision on them is horrendous. They cannot sell their homes because banks will not loan on property under a cloud such as this. There is money from past biennia to put toward solving this untenable result for these people. The 1945 groundwater law was appropriate for the 1.9 million population at that time. Our population has grown and is continuing to grow. Not everyone wants to live in the city. We need to be proactive in providing mitigation for domestic use provided by permit-exempt groundwater wells. The bill only does what the Swinomish Tribe and DOE already said they would do, which is not enforce against these people. This bill is very moderate in that it only addresses the part of the problem, which is those homes already built. People who bought land under the DOE rules as they were at the time but have not yet built their homes are left with the value of their property practically non-existent. What about the future? An in-stream flow rule has been requested in the Spokane area. What is the cost of piping water to rural homes?

CON: Once the court case came down saying these homes and businesses water supply was now interruptible, DOE's director called the Chair of the Swinomish Tribe and they agreed that deferring interruption to these water supplies was the best course to take while solutions are being found. These solutions through partnerships are intended to be long term, and provide certainty and uninterrupted water using mitigation. The possibility of extending piped water from the Skagit PUD is also being considered. This bill would invite litigation and dissention. It would be more cost effective to allow DOE to approach the problem using the tools and partnerships already available and being put into place. The bill has legal problems in reshuffling the junior and senior water rights holders, telling DOE to do what the Supreme Court told them not to do, and by being retroactive. While the Legislature has been

generous with funding from past biennia, more funding will be required. It is a problem caused by a DOE rule held to be illegal so it is appropriate that the state pay the cost of rectifying the problem.

Persons Testifying: PRO: Senator Honeyford, prime sponsor; Glen Smith, WA State Ground Water Assn.; Bill Clarke, WA Realtors; Kathleen Collins, WA Water Policy Alliance; Jim Halstrom, citizen.

CON: Devour Jurassic, Swinomish Tribe; Tom Loranger, DOE; Bruce Wishart, Center for Environmental Law and Policy, Sierra Club.